

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 71 By Senator Appel**KEYWORD AND SUMMARY AS RETURNED TO THE SENATE**

PUBLIC CONTRACTS. Requires state and local contractors to disclose the full disposition, splitting, or sharing of contract commissions, fees, or other consideration by an "affidavit of notice of fee disposition" for certain public contracts, and provides relative to performance-based energy efficiency contracts. (7/1/10)

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Changed "contract awarded without bidding" to "contract awarded with or without bidding".
2. Added provisions relative to performance-based energy efficiency contracts.
3. Added that any appropriation to an agency shall not be deemed an appropriation of funds by the legislature to fulfill the requirements of a performance-based energy efficiency contract awarded on or after January 1, 2010, unless and until such contract is approved by the Joint Legislative Committee on the Budget.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

Proposed law requires any person or other entity who enters into any contract awarded with or without bidding with a "public entity" in which a commission, fee, or other consideration is paid to the contractor for the contractor to sell to or provide to the public entity any commodity, goods, brokerage service or other service of any kind, insurance, or anything of value, to disclose the full disposition, splitting, or sharing of such commission, fee, or other consideration to the "public entity" in writing by an "affidavit of notice of fee disposition".

Proposed law defines "public entity" as the state or any political subdivision of the state, or any agency, department, office, or other instrumentality of the state or political subdivision.

Proposed law provides that the "affidavit of notice of fee disposition" must be on a form prescribed by the Board of Ethics and must be notarized as to its authenticity; must include the full value of the commission, fee, or other consideration to be paid, the names of all parties to receive dispositions, splits, or shares of the commission, fee, or other consideration, and the signature of the party authorized to commit the entity to the contract, who must attest to the truth of the facts set forth in the affidavit. The affidavit of notice of fee disposition must be attached to and made a part of the contract for which the commission, fee, or other consideration is paid and must be recorded in the public record.

Proposed law requires the contractor to prepare, execute, notarize, and record in the public record new affidavit reflecting changes in the disposition, splitting, or sharing of the commission, fee, or other consideration or changes in the amount.

If for any reason the information on the recorded affidavit is found to be incorrect, then the contract is null and void and all payments of the commission, fee, or other consideration must be rebated to the public entity. Intentional misrepresentation of the facts on an affidavit subjects the party attesting to the facts to the penalties provided for filing or maintaining false public records - imprisonment for not more than 5 years with or without hard labor or a fine of not more than \$5,000, or both.

Present law provides relative to performance-based energy efficiency contracts. Authorizes a state agency to enter into such contract, and provides that such contract shall

be considered a consulting services contract and shall be awarded through a request for proposal process under the present law. Provides terms and conditions for such contracts, and process for review of RFPs. Provides for selection and award by the commissioner of administration.

Proposed law retains present law and adds requirement of approval by the Joint Legislative Committee on the Budget.

Present law provides that the legislative auditor shall conduct performance audits of performance-based energy efficiency contracts, and sets forth procedure for such audits. Proposed law adds that the auditor shall establish a written schedule for execution of such audits and post the schedule on its website no later than February 1st of each year. Further provides that the auditor shall coordinate with the commissioner of administration to develop a description of information to be included as part of each performance audit. Provides that audits shall be conducted on each performance-based energy efficiency contract in effect on and after January 1, 2010.

Proposed law further provides that any appropriation to an agency shall not be deemed an appropriation of funds by the legislature to fulfill the requirements of a performance-based energy efficiency contract awarded on or after January 1, 2010, unless and until such contract is approved by the Joint Legislative Committee on the Budget.

Effective July 1, 2010.

(Amends R.S. 39:1496.1(E)(1)(c) and (2) and 1767 and R.S. 48:251.8; adds R.S. 38:2196.1, R.S. 39:200(N), 1493.1, 1496.1(F), and 1758)

Jerry G. Jones
Senate Counsel